

IN THE CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE, TENNESSEE

STATE OF TENNESSEE,)	
)	
Plaintiff,)	
)	
v.)	Docket No. _____
)	
FORD MOTOR COMPANY,)	
a Delaware corporation with its)	
principal place of business in)	
Dearborn, Michigan,)	
)	
Defendant.)	

COMPLAINT

This civil action is brought in the name of the State of Tennessee, by and through the Attorney General (“Attorney General”), pursuant to *Tenn. Code Ann.* § 47-18-108(a)(1) and 47-18-114 at the request of David A. McCollum, the Director of the Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance (“Division”). The Division has reason to believe that the Defendant named herein has violated the Tennessee Consumer Protection Act of 1977, *Tenn. Code Ann.* § 47-18-101, *et seq.* and that this action is in the public interest.

The Attorney General brings this civil action regarding the acts and practices of Ford Motor Company (“Ford”) concerning (1) the marketing, advertising and sale of Ford Explorers, Mercury Mountaineers, and certain other specified sport utility vehicles (“SUVs”), all of which were manufactured during model years 1990 through 2001; and, (2) the advertising and marketing of certain specified tires that were sold through Ford dealers as

replacement tires for tires placed as original equipment on certain motor vehicles manufactured by Ford.

In summary, and as further set forth herein, the Attorney General alleges that Ford (1) failed to disclose to consumers a known safety risk associated with driving the Ford Explorer equipped with certain Firestone tires, *viz*, the Firestone ATX and Wilderness AT tires; (2) deceptively advertised certain aftermarket tires as the same as those originally placed on Ford motor vehicles, when in fact they were not; (3) deceptively advertised its SUVs as having certain characteristics and capabilities that, in fact, they do not have and, (4) failing to provide material disclosures regarding its SUVs in the same language as those SUVs were advertised. The Attorney General contends that these practices by Ford were unfair and deceptive, and therefore unlawful, pursuant to Tenn. Code Ann. § 47-18-108.

The Attorney General is the chief civil law enforcement officer in the State. He has the unique responsibility to protect the public interest of Tennessee's consumers from misrepresentations, omissions of facts and other safety hazards which impact Tennessee. He also has a unique enforcement role over those who do business within the State of Tennessee, or that operate or manufacture goods for distribution and use throughout the country from this state. It is in this critical role that the Attorney General commences this lawsuit against Ford Motor Company.

I. JURISDICTION AND VENUE

1. The State of Tennessee invokes the jurisdiction of this Court pursuant to the provisions of Tenn. Code Ann. § 47-18-108. Venue is proper in Davidson County, pursuant to the provisions of Tenn. Code Ann. § 47-18-108(a)(3), because it is a county in which Defendant

has conducted business. An Affidavit and Verification of David A. McCollum, Director, Division of Consumer Affairs, Department of Commerce and Insurance, is attached hereto as Exhibit B and incorporated by reference in this Complaint.

II. PARTIES

2. Plaintiff is the State of Tennessee. Pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1) and 47-18-114, this action is commenced in the name of the State of Tennessee by the Attorney General at the request of the Division.

3. Defendant Ford Motor Company, is a corporation organized under the laws of the State of Delaware, with its principal place of business in Dearborn, Michigan.

III. FACTUAL ALLEGATIONS

The State of Tennessee alleges as follows:

4. At all times relevant here to, the conduct alleged herein occurred in the trade or commerce of this State.

A. Ford's Failure to Disclose Known Safety Risk

5. Beginning no later than 1990, and continuing through the 2001 model year, Ford Motor Company manufactured and sold SUVs and, in particular, the Ford Explorer in the United States and throughout the world. Ford advertised, marketed, and sold the Explorer, and other SUVs, in the State of Tennessee.

6. Beginning no later than 1990, and continuing until in or about May 2001, Ford placed – as original equipment on new Explorers tires manufactured by Bridgestone/Firestone and branded as Firestone ATX (“ATX”) or Firestone Wilderness AT (“Wilderness AT”).

7. Beginning at a time uncertain to Plaintiff, but in any event no later than 1997, Ford knew or should have known that Explorers equipped with ATX or Wilderness AT tires were experiencing increased levels of tire failures due to tread separations. Ford knew or should have known that the failures were occurring more frequently in warmer climates. Ford knew or should have known that, as a result of these tire failures, Ford Explorers equipped with ATX or Wilderness AT tires were experiencing increased levels of rollovers. Ford knew or should have known of these tire failures and/or rollovers through a variety of sources, including but not limited to: (1) warranty/complaint data collected by Ford and its dealers; (2) consumer complaints; (3) lawsuits against Ford Motor Company for personal injuries sustained in Ford Explorer rollovers; (4) data collected by insurance groups; (5) data collected by the National Highway Traffic and Safety Administration; and (6) reports received by Ford of problems in other countries involving the same tires and the same vehicle, especially in countries with warmer climates.

8. Beginning in approximately 1999, Ford executives in the U.S. were notified by Ford of Venezuela that Explorers equipped with ATX and Wilderness AT tires were experiencing elevated levels of tire failures and were rolling over in Venezuela.

9. Beginning in approximately 1998, Ford executives in the U.S. were notified by Ford dealers in Saudi Arabia that Explorers equipped with ATX and Wilderness AT tires were experiencing elevated levels of tire failures and were rolling over in Saudi Arabia. Ford continued to get reports of Explorer tire failures resulting in rollovers, injuries and deaths in warm weather Gulf Coast countries for the next two years.

10. Beginning in approximately 1999, Ford executives in the U.S. were notified by Ford dealers in Malaysia and Thailand that Explorers equipped with ATX and Wilderness AT tires were experiencing elevated levels of tire failure and were rolling over in Malaysia and Thailand.

11. In or about August 1999, Ford issued a “silent recall” to Explorer owners in Venezuela. Through this program, Ford contacted Explorer owners and provided misleading information suggesting that Ford wished them to bring their Explorers to Ford Dealers for a “Special Promotion” offering “free tire rotation and free inspection services.” In truth and in fact, the true purpose of the program was to inspect the tires for signs of tire failure and, where discovered, to replace the tires. However, Ford did not disclose the true purpose of this program to U.S. regulators, U.S. dealers or U.S. consumers.

12. In February, 2000, Ford approved an “owner’s notification program” in Malaysia and Thailand, the purpose of which was to recall and replace the ATX or Wilderness AT tires on Ford Explorers in those countries without adequately notifying consumers of the reasons underlying the notification program. Ford did not disclose this recall to U.S. regulators, U.S. dealers or U.S. consumers.

B. Ford’s Deceptive Advertising

13. Beginning in approximately 1989, and continuing through 2001, Ford marketed and advertised the performance, use and safety of the Ford Explorers in a manner which misled consumers in several material ways.

Deceptively Representations Regarding Handling and Steering as “Carlike”

14. In or about March, 1989, the Attorneys General of several states sent a letter to major automobile manufacturers, including Ford, in the aftermath of a settlement with Suzuki Motors. This letter warned the automobile manufacturers, including Ford, against advertising multipurpose passenger vehicles such as the Explorer in a manner which “blurs the distinction” between these vehicles and passenger vehicles. The letter suggested that such advertising was deceptive unless appropriate warnings were placed in the advertising.

15. Despite the receipt of this 1989 letter warning, and despite the fact that the Explorer was a “truck”, built on a truck chassis, Ford marketed and advertised the Explorer as being engineered to have “carlike” steering and handling, thus blurring critical distinctions between Explorer and passenger cars.

16. In truth and in fact, the Explorer’s steering and handling were not carlike in material ways.

17. Post-sale disclosures given to consumers only after the sale contradicted Ford’s advertisements and warned Explorer owners that the Explorer was not a passenger car, and that its handling and steering were materially different than cars. Such post-sale disclosures warned that if the Explorer was handled or steered like a car in certain circumstances, the vehicle had a higher safety risk associated with it, such as the higher risk of rollover. These safety risks associated with handling and steering the Explorer like a car were not disclosed in Ford’s advertisements of the Explorer.

Deceptively Representations Regarding Cargo Load Capacity

18. Ford advertised the Explorer as having “best in class” cargo capacity.

19. Ford stated or implied in its advertising that the cargo-carrying capacity of the Explorer was limited by volume. In truth, the cargo carrying capacity of the Explorer was limited by weight and weight distribution, not volume.

20. Nevertheless, Ford stated or implied in its advertising that consumers could safely load the Explorer up to its cargo volume capacity without regard to any weight limitation. Among other representations, Ford claimed “pack all the gear you need, and then some.”

21. In fact, the weight limitation – or Gross Vehicle Weight Rating (GVWR) for many models of the Explorer was less than that of competitors. In fact, for some models, if a consumer loaded the Explorer with popular options, and with a person in each seat (as advertised by Ford), the Explorer’s GVWR would be exceeded, leaving zero capacity to safely carry any cargo.

22. In contrast to Ford’s advertising, post-sale disclosures warned consumers that cargo capacity was limited by weight, not volume, and that safety risks, such as the increased risk of tire failure and rollover, were associated with exceeding the GVWR. Ford failed to disclose in its advertisements the safety risks associated with loading the Explorer over its weight capacity.

Deceptive Representations Regarding Aftermarket Tire

23. In or about 1998, Ford developed a program entitled “Around the Wheel” to better facilitate the sale of Ford-approved component parts through its dealers.

24. As part of its “Around the Wheel” program Ford advertised Ford-approved replacement tires – including Firestone tires – for sale through its dealerships.

25. In its “Around the Wheel” advertising, Ford touted its dealers as “experts” in the component parts, such as tires, to be used as replacements on Ford vehicles.

26. Ford advertised its replacement tires – including Firestone tires – as “the same tires” as those placed as Original Equipment (OE) on the vehicles it manufactured. Ford encouraged consumers to buy these “same tires” in order to “experience” the same feeling they had when they first drove their Ford vehicles.

27. In fact, the tires that Ford sold through its “Around the Wheel” program, while having the same appearance of like size Original Equipment tires, were not the same tires as the tires used as OE on its vehicles. These aftermarket tires were often made with different specifications, different uniformity standards, and using different compounds.

28. Ford knew or should have known that the tires sold by Ford in its “Around the Wheel” program were not the same as the tires that were placed as Original Equipment on the vehicles it manufactured. Ford knew or should have known that the tires were made to different specifications than OE tires.

C. Ford's Failure to Provide Disclosures in Spanish Language

29. At all times relevant hereto, Ford advertised its SUVs in the Spanish language.

30. In its Spanish language advertisements of SUVs, Ford failed to include material disclosures and limitations on the characteristics and capabilities of the advertised SUVs, viz, that cargo and loading capacity was limited by weight, rather than volume, and that loading the SUV pursuant to its

volume capacity, rather than its weight capacity, may overload the vehicle and increase the probability of tire tread separation.

31. Further, Ford failed to provide to Spanish-language speaking consumers who purchased SUVs a Spanish-language copy of the Owner Guide – a document that contained material disclosures and limitations regarding the safe use of the vehicle.

IV. CAUSES OF ACTION

32. The State of Tennessee re-alleges all preceding paragraphs of this Complaint, and incorporates them herein.

33. Defendant Ford Motor Company engaged in unfair and deceptive acts and practices as defined in Tenn. Code Ann. § 47-18-101, *et seq.* Defendant has violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et seq.*, by engaging in various unfair, misleading or deceptive acts or practices, including but not limited to:

- (A) Deceptively advertising the Ford Explorer as having “car-like” steering and handling;
- (B) Deceptively advertising the Explorer as being capable of carrying more cargo and/or passengers than it could safely carry pursuant to the vehicle’s weight limitations;
- (C) Deceptively advertising that certain aftermarket tires sold through the “Around the Wheel” program were the same tires as those that were originally placed on the vehicle by Ford when in fact they were not.

- (D) Failing to disclose a known safety risk associated with Ford Explorers equipped with ATX and Wilderness AT tires.
- (E) Failing to include in its Spanish-language advertisements of SUVs all necessary disclosures or limitations on the advertised vehicle.

V. RELIEF

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, THE STATE OF TENNESSEE PRAYS:

1. That this Complaint be filed without cost bond as provided by Tenn. Code Ann. §§ 20-13-101, 47-18-108 and 47-18-116.
2. That process issue and be served upon Defendant pursuant to Tenn. Code Ann. § 20-2-201, requiring it to appear and answer this Complaint.
3. That this Honorable Court adjudge and decree that Defendant has engaged in acts or practices in violation of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et seq.*, as previously set forth.
4. That this Court permanently enjoin and restrain the Defendant from engaging in deceptive and unfair practices set forth herein and from violating the Tennessee Consumer Protection Act of 1977.

5. That the Court adjudge and decree that the Defendant is liable for the reasonable costs and expenses of the investigation and prosecution of the Defendant's actions, including attorneys' fees, as is provided by Tenn. Code Ann. § 47-18-108(b).

6. That the Court adjudge and decree that the Defendant pay civil penalties of not more than one thousand dollars (\$1,000.00) per violation to the State as provided by Tenn. Code Ann. § 47-18-108(b).

7. That all costs in this cause be taxed against Defendant.

8. That this Court grant Plaintiff such other and further relief as this Court deems just and proper.

Respectfully submitted,

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